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**Supreme Court of the United States**

OCTOBER TERM, 1939.

No. 193. ORIGINAL.

**NATIONAL LABOR RELATIONS BOARD, *et al.*,**

Petitioner,

—VS.—

**WATERMAN STEAMSHIP CORPORATION,**

Respondent.

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**PETITION FOR LEAVE TO MOVE TO INTERVENE  
AND TO BE MADE PARTY.**

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Joseph Kovner

WILLIAM L. STANDARD,

Attorney for Petitioner.



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1939.

No. 193. ORIGINAL.

**NATIONAL LABOR RELATIONS BOARD, *et al.*,**

Petitioner,

—vs.—

**WATERMAN STEAMSHIP CORPORATION,**

Respondent.

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE  
SUPREME COURT OF THE UNITED STATES:

Now, comes the NATIONAL MARITIME UNION OF AMERICA, an unincorporated labor organization having its principal office and place of business in the City of New York, State of New York, by its attorney, WILLIAM L. STANDARD, Esq., and moves the Court for leave to file this petition to intervene and be made a party hereto.

I. Your petitioner shows unto your honors that the NATIONAL MARITIME UNION OF AMERICA is vitally interested in the issues of this appeal because it affects substantially the rights to employment of hundreds of its fifty thousand members on the vessels of the respondent, and because the said Union, and not the National Labor Relations Board, is the real party in interest on this appeal.

II. Prior to this appeal, said NATIONAL MARITIME UNION OF AMERICA participated in the conduct of this case before the National Labor Relations Board, as a party thereto, and

before the United States Circuit Court of Appeals for the Fifth Circuit, as an intervenor.

Upon charges filed by the NATIONAL MARITIME UNION OF AMERICA, the National Labor Relations Board issued its complaint, charging the Waterman Steamship Corporation with violations of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449. Upon this complaint, hearings were held before the National Labor Relations Board, in which the NATIONAL MARITIME UNION OF AMERICA was a party to the proceeding and participated therein by its counsel.

Thereafter, oral argument was had before the National Labor Relations Board, in which the NATIONAL MARITIME UNION OF AMERICA, by its counsel, participated.

III. On May 17th, 1938, the National Labor Relations Board duly issued its decision and order, wherein the National Labor Relations Board ordered the Waterman Steamship Corporation and its officers, agents, successors and assigns, in addition to a number of remedial actions, shall:

"I. Cease and desist:

- (a) From refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers, and under the same conditions, as it grants passes to the representatives of the International Seamen's Union of America, or its successor;
- (b) From discouraging membership in the National Maritime Union of America, Marine Engineers Beneficial Association, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its employees, or in any man-

ner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment;

“2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Grant passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America, or its successors.”

IV. As appears from the decision and order of the National Labor Relations Board, the NATIONAL MARITIME UNION OF AMERICA by virtue of that order, obtained a substantial interest in the enforcement of this order.

V. Thereafter, the Waterman Steamship Corporation, the respondent in the proceedings before the National Labor Relations Board, appealed to the United States Circuit Court of Appeals for the Fifth Circuit, to review and set aside the Board's order, and the National Labor Relations Board filed a cross-appeal, requesting the enforcement of its order. The NATIONAL MARITIME UNION OF AMERICA was granted leave to intervene in the said appeal by order of said Court, dated November 15th, 1938. Counsel for the NATIONAL MARITIME UNION OF AMERICA filed a brief in behalf of the NATIONAL MARITIME UNION OF AMERICA, as intervenor, and participated at the oral argument on the appeal.

VI. Subsequent thereto, and on April 11th, 1939, the Fifth Circuit Court, in a written opinion (reported in 103 Fed. 2d 157), issued an order granting the petition of the Waterman Steamship Corporation and vacating the order of the National Labor Relations Board, “except as modified and

approved as to C. J. O'Connor," a member of the Marine Engineers Beneficial Association.

This opinion of the Circuit Court adopted as a legal proposition the contention which the Waterman Steamship Corporation had urged in its brief before the said Circuit Court of Appeals. That proposition of law, never passed upon by this highest tribunal of the land, is succinctly summarized by the steamship company, as follows:

"All of the members of the crews, as above suggested, were automatically laid off, as a matter of law when their period of employment terminated according to the shipping articles signed by them at the time their voyage ended and not by any act of the Waterman Steamship Corporation. Their contract terminated and they were no longer employees of the Waterman Steamship Corporation and the only way they could again become employees of the Waterman Steamship Corporation would be by entering into a new contract with that company for some future voyage." (Page 16, respondent's brief in opposition to writ.)

This is the position which the company has consistently maintained, both before the National Labor Relations Board and before the United States Circuit Court of Appeals, in its brief for the reversal of the Board's order. This is the position which it now maintains before this Court, in opposing the writ sought herein.

VII. In *Peninsular & Occidental S. S. Co. v. N. L. R. B.*, 98 F. (2d) 411 (C. C. A., 5th, 1938), this same Circuit Court also seemed to adopt the view that a seaman's employment begins only with the signing on of articles, and terminates automatically, without any other affirmative act of discharge, at the conclusion of the voyage described in the articles. The NATIONAL MARITIME UNION OF AMERICA is deeply concerned with the question. Prior to these decisions of the Circuit

Court, it seemed to have been the prevailing view in the maritime industry that shipping articles, intended to benefit seamen, were required to be signed only so that conditions on shipboard with respect to health, food, civil rights, wages and hours of labor would be guaranteed them, and so that they would not be compelled to serve against their will on voyages of greater duration than they had been led to believe were intended, and not to automatically delimit the employment of seamen as these decisions would seem to indicate.

VII. As opposed to the contentions of the Waterman Steamship Corporation, *supra*, the NATIONAL MARITIME UNION OF AMERICA is, therefore, primarily interested as a proponent of the contentions that:

1. The signing on and the signing off of shipping articles is but an incident in what is, in most instances, a long term employment of seamen.
2. The employment relationship existed independently of the signing of articles, for in entering into the employment herein, neither employer nor employees intended that the signing on and off of shipping articles were to begin and end the term of employment, and, similarly, neither party intended the shipping articles to be the full and entire contract of employment.
3. In and of itself, therefore, the signing off of shipping articles in the instant case did not affect the tenure of employment of the seamen herein until the respondent, by a separate affirmative act, chose to terminate the existing employer-employee relationship because of the seamen's change of union affiliations.
4. Since the discharge which accompanied and followed the signing off of articles could not be justified on the ground that the employer-employee

relationship had been terminated, the discharge terminating the tenure of employment, as a matter of law, was a violation of Section 8, subdivisions (1) and (3) of the National Labor Relations Act.

5. The discharges which followed the signing off of shipping articles did not lawfully create such vacancies as to warrant the hiring of a full crew of U. S. I. S. seamen under the obligations allegedly imposed upon the Waterman Steamship Corporation by the International Seamen's Union preferential contract.

With reference to the other points raised, the NATIONAL MARITIME UNION OF AMERICA rests upon all of the arguments advanced by the National Labor Relations Board.

IX. In order to prove its contention that the expiration of shipping articles does not automatically terminate the employment of seamen, the NATIONAL MARITIME UNION OF AMERICA wishes to present to this Honorable Court the historical background of, and; the subsequent passage of laws relating to, shipping articles and their relation to modern maritime custom and industry.

X. The NATIONAL MARITIME UNION OF AMERICA seeks to join with the National Labor Relations Board in its appeal for a reversal of the judgment of the Circuit Court of Appeals for the Fifth Circuit, vacating and setting aside the order of the National Labor Relations Board, and for appropriate relief enforcing the order of the said National Labor Relations Board in the instant case.

XI. All of the testimony pertinent to this issue has been printed as required by the rules of this Court and your petitioner will require no additional printing of the record.

WHEREFORE, the NATIONAL MARITIME UNION OF AMERICA, by its attorneys, prays for an order permitting it to intervene and be made a party plaintiff to this suit, and to file its brief, and for time for oral argument on the appeal, and for such other and further relief as may seem meet.

NATIONAL MARITIME UNION OF AMERICA

By

William L. Standard  
Petitioner  
Attorney for Petitioner.

11/3/39

STATE OF NEW YORK,  
COUNTY OF NEW YORK, { ss.

WILLIAM L. STANDARD, being duly sworn, deposes and says:

That he is the attorney for the petitioner in the foregoing petition; that he has read the said petition and has personal knowledge of the matters and things therein set forth, and believes the same to be true.

Affiant further states that the petition for leave to move to intervene and be made a party plaintiff is prepared and filed in the utmost good faith, believing that the same is meritorious, and that the said petition is not presented and prepared in order to be vexatious and to delay the final opinion and judgment in the case.

Affiant further states that he is a member of the bar of this Court.

William L. Standard

WILLIAM L. STANDARD.

Subscribed and sworn to before me this

3rd day of November, 1939.

Abraham Weisberg,

Notary Public, Kings County,

Kings Co. Clk.'s No. 55, Reg. No. 162,

N. Y. Co. Clk.'s No. 186, Reg. No. O-W-122.

Commission expires March 30, 1940.

I, WILLIAM L. STANDARD, do hereby certify that on this 7th day of November, 1939, I forwarded, with postage prepaid, copies of the foregoing petition to GESSNER T. McCORVEY, Esq., counsel for respondent, Waterman Steamship Corporation, at 9th Floor, Merchants National Bank Building, Mobile, Alabama, and to CHARLES FAHY, Esq., General Counsel National Labor Relations Board, at Shoreham Building, Washington, D. C.

Executed this 7th day of November, 1939.

William L. Standard  
WILLIAM L. STANDARD.

I, WILLIAM L. STANDARD, do hereby certify that on this 3rd day of November, 1939, I sent a telegram prepaid to GESSNER T. McCORVEY, Esq., counsel for respondent, Waterman Steamship Corporation, at 9th Floor, Merchants National Bank Building, Mobile, Alabama, and to CHARLES FAHY, Esq., General Counsel, National Labor Relations Board, at Shoreham Building, Washington, D. C., stating in words as follows:

"The Undersigned, as Attorney for the National Maritime Union, will move on November 7th, 1939 before the Supreme Court for leave to intervene and be made a party in the case of *National Labor Relations Board v. Waterman Steamship Corporation*."

Executed this 3rd day of November, 1939.

WILLIAM L. STANDARD.  
William L. Standard